

E-FILED - 7/29/11

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ABEL P. REYES,)	No. C 10-1838 RMW (PR)
)	
Petitioner,)	ORDER DENYING PETITION
)	FOR WRIT OF HABEAS
vs.)	CORPUS; DENYING
)	CERTIFICATE OF
)	APPEALABILITY
HEADPASS, Warden,)	
)	
Respondent.)	
_____)	

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging a disciplinary hearing. Respondent was ordered to show cause why the writ should not be granted. Respondent has filed an answer, along with a supporting memorandum of points and authorities. Petitioner has responded with a traverse. For the reasons set forth below, the petition for a writ of habeas corpus is DENIED.

BACKGROUND

On November 15, 2007, Correctional Officer J. Duty was approached by the victim inmate ("victim"), who asked to go to the medical clinic because he needed treatment. (Resp. Ex. 2, Rules Violation Report.) Once at the medical clinic, the victim revealed two lacerations -- one on the front of his left thigh area and the other on the back of his left thigh area. (Id.) Duty returned to the victim's cell, which was shared with petitioner, and placed petitioner in

1 handcuffs. (Id.) Duty observed blood stains on a bed sheet in the upper bunk, and noted a
2 laceration to petitioner's left pinky finger, abrasions or scratches to the left side of petitioner's
3 face, and an abrasion or scratch on petitioner's right hand knuckle area. (Id.) Correctional
4 Officer Mendoza collected evidence from the crime scene, and photographed both the victim's
5 and petitioner's injuries. (Traverse, Ex. D.) Petitioner was charged with battery on an inmate
6 with a weapon.

7 On December 23, 2007, petitioner had a hearing regarding the disciplinary charge.
8 (Resp. Ex. 2, Rules Violation Report - Part C.) He pleaded not guilty. (Id.) He explained the
9 victim was cutting himself, and that he tried to stop him. (Id.) Petitioner also explained that the
10 small cuts on his neck were from shaving, and the scratch on his left pinky happened while he
11 was at his vocations assignment. (Id.) In response to questions asked of him, the victim
12 corroborated petitioner's statements and answered that he cut himself while petitioner was
13 attempting to stop him. (Id.) Ultimately, petitioner was found guilty. (Petition at 7.) The
14 hearing officer found that the cut around petitioner's jawline looked like it was from a
15 "defensive attempt to stop the attack," and noted that the area around the wound showed 1-2
16 days of hair growth and no hair shaved on any area of petitioner's face. (Resp. Ex. 2, Rules
17 Violation Report - Part C.) The hearing officer further noted that although it was corroborated
18 that petitioner sustained an injury while at his vocations assignment, the photograph showed a
19 fresh wound that was consistent with defensive wounds. (Id.) Finally, the hearing officer found
20 the victim's statements to be unreliable. (Id.) Petitioner was assessed, inter alia, 360 days loss
21 of credit. (Id.)

22 DISCUSSION

23 A. Standard of Review

24 This court may entertain a petition for writ of habeas corpus "in behalf of a person in
25 custody pursuant to the judgment of a state court only on the ground that he is in custody in
26 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).
27 Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a district court
28 may not grant a petition challenging a state conviction or sentence on the basis of a claim that

1 was reviewed on the merits in state court unless the state court's adjudication of the claim
2 "(1) resulted in a decision that was contrary to, or involved an unreasonable application of,
3 clearly established federal law, as determined by the Supreme Court of the United States; or (2)
4 resulted in a decision that was based on an unreasonable determination of the facts in light of the
5 evidence presented in the state court proceeding." 28 U.S.C. § 2254(d). The first prong applies
6 both to questions of law and to mixed questions of law and fact, Williams v. Taylor, 529 U.S.
7 362, 384-86 (2000), while the second prong applies to decisions based on factual determinations,
8 Miller-El v. Cockrell, 537 U.S. 322, 340 (2003).

9 "Under the 'contrary to' clause, a federal habeas court may grant the writ if the state
10 court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of
11 law or if the state court decides a case differently than [the] Court has on a set of materially
12 indistinguishable facts." Williams, 529 U.S. at 412-13. A state court decision is an
13 "unreasonable application of" Supreme Court authority, falling under the second clause of
14 § 2254(d)(1), if the state court correctly identifies the governing legal principle from the
15 Supreme Court's decisions but "unreasonably applies that principle to the facts of the prisoner's
16 case." Id. at 413. The federal court on habeas review may not issue the writ "simply because
17 that court concludes in its independent judgment that the relevant state-court decision applied
18 clearly established federal law erroneously or incorrectly." Id. at 411.

19 Under 28 U.S.C. § 2254(d)(2), a state court decision "based on a factual determination
20 will not be overturned on factual grounds unless objectively unreasonable in light of the
21 evidence presented in the state-court proceeding." Miller-El, 537 U.S. at 340. The court must
22 presume correct any determination of a factual issue made by a state court unless the petitioner
23 rebuts the presumption of correctness by clear and convincing evidence. See 28 U.S.C. §
24 2254(e)(1).

25 **B. Petitioner's Claims**

26 As grounds for federal habeas relief petitioner claims that his right to due process was
27 violated during the disciplinary hearing because he was not permitted to call witnesses to attend
28 the hearing either in person or by telephone, and there was insufficient evidence to find him

1 guilty of battery upon an inmate.

2 1. Right to call witnesses

3 Petitioner claims that he requested two witnesses at the hearing – J. Shaw, Vocational
4 Instructor, and the victim. Petitioner argues that his request was ignored.

5 An inmate in California is entitled to due process before being disciplined when the
6 discipline imposed will inevitably affect the duration of his sentence. See Sandin v. Conner, 515
7 U.S. 472, 484, 487 (1995). The process due in such a prison disciplinary proceeding includes
8 written notice, time to prepare for the hearing, a written statement of decision, allowance of
9 witnesses and documentary evidence when not unduly hazardous, and aid to the accused where
10 the inmate is illiterate or the issues are complex. Wolff, 418 U.S. at 564-67. The Due Process
11 Clause only requires that prisoners be afforded those procedures mandated by Wolff and its
12 progeny; it does not require that a prison comply with its own, more generous procedures. See
13 Walker v. Sumner, 14 F.3d 1415, 1419-20 (9th Cir. 1994).

14 The superior court denied this claim, observing that there was nothing in the record to
15 support petitioner's argument. (Resp., Ex. 3.)

16 The record demonstrates that on November 29, 2007, Investigative Employee
17 Correctional Officer E. Clark interviewed petitioner regarding the incident. (Petition, Ex. B.)
18 Petitioner stated that he did not cut the victim; rather, the victim cut himself. (Id.) In response to
19 petitioner's questions, Vocational Instructor J. Shaw indicated that he remembered petitioner
20 being present on November 15, but did not remember petitioner asking for a band-aid. (Id.) In
21 response to petitioner's questions, the victim stated that he cut himself on his thigh area, that he
22 had stopped taking his medication, that petitioner stopped him from cutting himself more, that
23 petitioner had cut himself shaving, and that petitioner cut his finger at work. (Id.)

24 It is undisputed that these statements, as well as petitioner's statements, were considered
25 by the hearing officer at the hearing. (Petition, Exs. B, C.) Although petitioner claims that he
26 should have been permitted to have the witnesses present at the hearing either in person or by
27 telephone, he has offered no evidence that either of the witnesses had any additional or relevant
28 information to offer at the hearing that was not already presented. See Wolff, 418 U.S. at 566

1 (“Prison officials must have the necessary discretion to keep the hearing within reasonable
2 limits.”); Bostic v. Carlson, 884 F.2d 1267, 1271 (9th Cir. 1989) (finding no due process
3 violation when hearing officer denied requested witnesses because they would not provide
4 additional information).

5 Even assuming that the failure to have Shaw or the victim appear at the hearing even
6 telephonically violated petitioner’s due process, petitioner has not offered any evidence
7 indicating that any omitted testimony of witnesses he wished to call would have changed the
8 result. Presumably, the testimony petitioner wished to proffer at the hearing from the witnesses
9 was already provided by the statements recorded by the Investigative Employee. (Petition, Exs.
10 B, C.) Thus, any error was harmless. See Brecht v. Abrahamson, 507 U.S. 619, 637 (1993).

11 2. Sufficiency of the Evidence

12 Next, petitioner claims that there was not “some evidence” to support his guilty finding.
13 The revocation of good-time credits does not comport with the minimum requirements of
14 procedural due process in Wolff unless the findings of the prison disciplinary decision-maker are
15 supported by some evidence in the record. Superintendent v. Hill, 472 U.S. 445, 454 (1985).
16 There must be “some evidence” from which the conclusion of the decision-maker could be
17 deduced. Id. at 455. An examination of the entire record is not required nor is an independent
18 assessment of the credibility of witnesses or weighing of the evidence. Id. The relevant question
19 is whether there is any evidence in the record that could support the conclusion reached by the
20 disciplinary decision-maker. Id. This standard is considerably lower than that applicable in
21 criminal trials. Id. at 456.

22 The evidence relied upon by the hearing officer in finding petitioner guilty of battery
23 upon an inmate with a weapon meets Hill’s “some evidence” standard. The state court correctly
24 identified the “some evidence” standard as the standard for judicial review and reasonably
25 applied it. (Resp., Ex. 3.)

26 Petitioner’s arguments here – that the victim stated that the wounds were self-inflicted,
27 that the victim stated that petitioner was the one who stopped him from continuing to cut
28 himself, that the cut on petitioner’s face was from shaving, and that the cut on petitioner’s hand

1 occurred when he was at his vocations assignment – do not aid petitioner because this court is
 2 not permitted to re-weigh the evidence in evaluating whether the “some evidence” standard is
 3 met. See Hill, 472 U.S. at 455. Here, the evidence included the observations that the cut on
 4 petitioner’s face and hand were consistent with defensive wounds; that the area around the injury
 5 on petitioner’s face demonstrated that he had not shaven in at least one day, which contradicted
 6 his explanation for the cut; and that petitioner had cuts and abrasions to his face and hands. The
 7 evidence satisfies the “some evidence” requirement. While petitioner did have evidence in his
 8 defense, the hearing officer did not have to accept it as true.

9 “The Federal Constitution does not require evidence that logically precludes any
 10 conclusion but the one reached by the disciplinary board.” Hill, 472 U.S. at 445. Thus, although
 11 the evidence could have led to another result for petitioner, the evidence to support the
 12 disciplinary decision was constitutionally sufficient and reliable. Petitioner’s right to due
 13 process was not violated by prison officials’ decision to find him guilty. The state court’s
 14 rejection of his claim was not contrary to or an unreasonable application of clearly established
 15 federal law.

16 CONCLUSION

17 For the reasons set forth above, the petition for writ of habeas corpus is DENIED. The
 18 clerk shall close the file.

19 CERTIFICATE OF APPEALABILITY

20 The federal rules governing habeas cases brought by state prisoners require a district
 21 court that denies a habeas petition to grant or deny a certificate of appealability (“COA”) in its
 22 ruling. Petitioner has failed to make a substantial showing that his claims amounted to a denial
 23 of his constitutional rights, or demonstrate that a reasonable jurist would find the denial of his
 24 claims debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, a COA
 25 is DENIED.

26 IT IS SO ORDERED.

27 Dated: 7/28/11

28 
 RONALD M. WHYTE
 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ABEL REYES,

Plaintiff,

v.

HEADPASS et al,

Defendant.

Case Number: CV10-01838 RMW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 29, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Abel P. Reyes P-55763
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Dated: July 29, 2011

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk